

real property occupies at least one unit of the real property as a principal residence of the owner.

Readily marketable collateral means insured deposits, financial instruments, and bullion in which the lender has a perfected interest. Financial instruments and bullion must be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market. Readily marketable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral.

Value means an opinion or estimate, set forth in an appraisal or evaluation, whichever may be appropriate, of the market value of real property, prepared in accordance with the agency's appraisal regulations and guidance. For loans to purchase an existing property, the term "value" means the lesser of the actual acquisition cost or the estimate of value.

1- to 4-family residential property means property containing fewer than five individual dwelling units, including manufactured homes permanently affixed to the underlying property (when deemed to be real property under state law).

[57 FR 62896, 62900, Dec. 31, 1992; 58 FR 4460, Jan. 14, 1993]

PART 366—CONTRACTOR CONFLICTS OF INTEREST

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AUTHORITY: 12 U.S.C. 1819, 1822(f)(3) and (4).

SOURCE: 61 FR 9596, Mar. 11, 1996, unless otherwise noted.

§ 366.1 Authority, purpose, and scope.

(a) *Authority.* This part is adopted pursuant to section 12(f)(3) and (4) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f)(3) and (4), and the rule-making authority of the Federal Deposit Insurance Corporation (FDIC) found at 12 U.S.C. 1819. Pursuant to those sections and consistent with the goals and purposes of titles 18 and 41 of

the U.S. Code, the FDIC is promulgating regulations in this part applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information. The regulations in this part also establish procedures for ensuring that independent contractors meet minimum standards of competence, experience, integrity, and fitness. The FDIC will apply this part to contractual activities it undertakes, including situations in which it is acting as manager of the Federal Savings and Loan Insurance Corporation (FSLIC) Resolution Fund (FRF). This part is in addition to, and not in lieu of, any other statute or regulation which may apply to such contractual activities. This part does not apply to the FDIC when acting as a conservator of a failed financial institution or when operating a bridge bank.

(b) *Purpose.* Consistent with the goals and purposes of titles 18 and 41 of the U.S. Code, this part seeks to establish:

- (1) Minimum standards which govern conflicts of interest, ethical responsibilities, and the use of confidential information by contractors;
- (2) Procedures to ensure that independent contractors meet minimum standards of competence, experience, integrity, and fitness; and
- (3) Official written guidance to contracting personnel who award contracts for services and to contractors who bid on such contracts.

(c) *Scope.* (1) (i) This part applies to:

(A) Contractors, including law firms and other independent contractors, that are not deemed, under 12 U.S.C. 1822(f)(1)(B), to be employees of the FDIC, which submit offers to provide services to the FDIC or which enter into contracts for services with the FDIC; and

(B) Subcontractors which enter into contracts to perform services under a proposed or existing contract with the FDIC.

(ii) Contractors that are deemed under 12 U.S.C. 1822(f)(1)(B) to be employees of the Corporation are subject, in addition to this part, to Title 18 of the United States Code; the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635); the Supplemental Standards of Ethical

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Conduct for Employees of the Federal Deposit Insurance Corporation (5 CFR part 3201); the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture regulations (5 CFR part 2634); and the Supplemental Financial Disclosure Requirements for Employees of the Federal Deposit Insurance Corporation (5 CFR part 3202).

(2) For all contractors subject to this part, the FDIC will apply this part to contracts which are entered into between the contractors and the FDIC on or after April 10, 1996. In addition, this part applies to contracts between contractors subject to this part and the FDIC which exist on April 10, 1996 for which a contractual action, such as a modification, extension, or exercise of an option, takes place on or after April 10, 1996.

(d) *Resolution Trust Corporation transition.* This part shall apply to all RTC contractors that provide services to the FDIC after the RTC's termination which occurred, by statute, December 31, 1995.

§ 366.2 Definitions.

As used in this part:

(a) *Affiliated business entity* means a company that is under the control of the contractor, is in control of the contractor or is under common control with the contractor.

(b) *Company* means any corporation, firm, partnership, society, joint venture, business trust, association or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, or any other organization or institution, but shall not include any corporation the majority of the shares of which are owned by the United States, any state, or the District of Columbia.

(c) *Conflict of interest* means a situation in which:

(1) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC, has one or more personal, business, or fi-

nancial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a proposed or existing FDIC contract; or

(2) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC, is an adverse party to the FDIC, RTC, FSLIC, or their successors in a lawsuit; or

(3) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC, has ever been suspended, excluded, or debarred from contracting with a Federal entity or has ever had a contract with the FDIC, RTC, FSLIC or their successors rescinded or terminated prior to the contract's completion and which rescission or termination involved issues of conflicts of interest or ethical responsibilities; or

(4) Any other facts exist which the FDIC, in its sole discretion, determines may, through performance of a proposed or existing FDIC contract, provide a contractor with an unfair competitive advantage which favors the interests of the contractor or any person with whom the contractor has or is likely to have a personal or business relationship.

(d) *Contractor* means a person which has submitted an offer to perform services for the FDIC or has a contractual arrangement with the FDIC to perform services.

(e) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; the ability to direct in any manner the election of a majority of a company's directors or trustees; or the ability to exercise a controlling influence over the company's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.